

TITLE 13. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER AMENDMENTS TO REGULATIONS FOR THE AVAILABILITY OF CALIFORNIA MOTOR VEHICLE SERVICE INFORMATION

The Air Resources Board (the Board or ARB) will conduct a public hearing at the time and place noted below to consider the adoption of amendments to regulations regarding the availability of motor vehicle service information in California.

DATE: January 22, 2004

TIME: 9:00 am

PLACE: California Environmental Protection Agency
Air Resources Board
Central Valley Auditorium, Second Floor
1001 I Street
Sacramento, CA 95814

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., January 22, 2004, and may continue at 8:30 a.m., January 23, 2004. This item might not be considered until January 23, 2004. Please consult the agenda for the meeting, which will be available at least 10 days before January 22, 2004, to determine the day on which this item will be considered.

The facility is accessible to persons with disabilities. If you have special accommodation or language needs, please contact the ARB's Clerk of the Board at (916) 322-5594 or sdorais@arb.ca.gov as soon as possible. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected:

Amendment of title 13, California Code of Regulations (CCR), division 3, chapter 1, Motor Vehicle Pollution Control Devices; article 2, Approval of Motor Vehicle Pollution Control Devices (New Vehicles), section 1969, Motor Vehicle Service Information – 1994 and Subsequent Model Passenger Cars, Light-Duty and Medium-Duty Vehicles, and the document incorporated therein, "Society of Automotive Engineers (SAE)

Recommended Practice J2534, "Recommended Practice for Pass-Thru Vehicle Programming," January 2004, and incorporation by reference of the following documents: The Maintenance Council's Recommended Practice RP1210A, "Windows™ Communication API," July 1999, and SAE J2403, "Medium/Heavy-Duty E/E Systems Diagnosis Nomenclature," October 1998.

Background

Senate Bill 1146 (SB 1146), enacted in 2000 and principally codified at Health and Safety Code section 43105.5, directed the ARB to develop service information regulations no later than January 1, 2002. The legislation requires all manufacturers of 1994 and later model vehicles equipped with second generation, on-board diagnostic systems (OBD) to make available for purchase emission-related service information to independent service facilities and the aftermarket parts industry. On December 13, 2001, the Board approved adoption of the ARB's service information regulation, which was formally implemented on March 30, 2003.

The regulation ensures that California service technicians have access to all service information literature, OBD descriptions and diagnostic information, training, and tools necessary to effectively diagnose and repair emission-related malfunctions. The regulation also requires vehicle manufacturers to make the information and tools available to aftermarket parts manufacturers to better ensure the availability of emissions-related replacement parts. Motor vehicle manufacturers are required under the regulation to make all text based service information available directly over the Internet. They are also required to make available for sale diagnostic tools that are supplied to their franchised dealerships. The data stream information on which these tools are based must also be made available to aftermarket diagnostic tool manufacturers to enable them to incorporate comparable emission-related functions into their tools. The regulation mandates that the prices charged by the vehicle manufacturers for the above information and tools must be fair, reasonable, and nondiscriminatory. Pursuant to the regulation, all light- and medium-duty vehicle manufacturers currently have operational service information websites on the Internet.

At the time the Board adopted the service information regulation, it directed the staff to monitor the implementation and effectiveness of the regulation, and to report back to the Board with necessary amendments within two years. Over the last two years, the ARB staff has worked with vehicle manufacturer and independent service industry stakeholders, and is proposing amendments to address an unresolved issue from the December 2001 Board hearing. The staff is further proposing amendments to the regulation that expand the scope of the regulation to heavy-duty vehicles equipped with OBD systems.

In drafting the regulatory amendments, the ARB staff met with engine and vehicle manufacturers, aftermarket parts manufacturers, trade associations and other interested

parties in various meetings and via phone calls. Staff issued Mail-Out MSO #2003-03 on July 7, 2003, which explained staff's proposed amendments to the service information regulation. Several written comments were submitted to the ARB in response to the mail-out and were considered in the development of the final proposal. Following the issuance of the mail-out, the staff also held a public workshop on August 14, 2003, to discuss the draft proposal. Representatives from both the vehicle manufacturing and aftermarket industries attended, and provided comments and testimony.

Proposed Amendments

Below is a summary of the staff's proposed amendments for consideration by the Board:

Testing Remanufactured On-Board Computers Equipped with Immobilizers

At the December 2001 Board hearing, significant discussion took place on the subject of passive anti-theft systems otherwise known as immobilizers. Specifically, the discussion focused on whether remanufacturers of on-board computers were entitled under SB 1146 to immobilizer initialization information necessary to facilitate bench testing of remanufactured immobilizer equipped computers. The Board adopted staff's recommendation that the statute did not provide on-board computer remanufacturers with the right of access to specialized immobilizer initialization information. Nonetheless, the Board directed the staff to work with stakeholders to determine if there were ways for remanufacturers to effectively bench test rebuilt computers with immobilizer circuitry without compromising motor vehicle security.

Over the past two years, the ARB staff has held several discussions with vehicle manufacturers and on-board computer remanufacturers. Based on these discussions, the staff believes that a reasonably practical, cost-effective, and secure solution is available that will work with most vehicle manufacturers' on-board computer designs. The solution centers on the use of generic scan tools and other low-cost tools and equipment that would allow on-board computer remanufacturers to use repair industry initialization procedures to bench test rebuilt computers. Under the recently finalized amendments to federal service information requirements, vehicle manufacturers must provide these low-cost initialization methods for use by aftermarket service technicians. (40 Code of Federal Regulations (CFR), Part 86, section 86.096.38(g)(6).) These same methods can be adapted by on-board computer remanufacturers for their testing purposes. To further ensure the availability of these procedures in California, the ARB staff is proposing to amend the California regulation to include language similar to that in the federal service information rule. The amendment should also reduce immobilizer reinitialization costs for the vehicle service industry.

Heavy-Duty Applicability

The ARB is currently in the midst of developing requirements for all 2007 and later model year heavy-duty vehicles (i.e., vehicles weighing more than 14,000 pounds gross vehicle weight rating) to be equipped with OBD systems. Because OBD is an important tool used to diagnose and repair vehicles, staff is proposing an amendment to require manufacturers of heavy-duty engines and transmissions to make service information and tools available for purchase.

Minor revisions to the requirements, as they would apply to heavy-duty manufacturers, are included in the staff's proposal to reflect inherent differences between the light- and heavy-duty vehicle industries. The differences include an option for heavy-duty manufacturers to require users of diagnostic tools to be trained in their proper use as a condition of sale. Staff also proposes to allow the heavy-duty industry to use standardized practices for reprogramming and nomenclature already in existence for the industry.

J2534 Update

The existing regulation requires on-board computer reprogramming for 2004 and later model year light-/medium-duty vehicles to be in compliance with the Society of Automotive Engineers (SAE) J2534, which is incorporated by reference into title 13, CCR, section 1969(f)(3)(A). To address minor implementation issues that have arisen with the introduction of reprogramming equipment for 2004 model year vehicles, the SAE has amended the J2534 protocol by adding further detail and clarification. The staff is proposing that the most recent version of SAE J2534 document be incorporated into the regulation.

Other Modifications

Minor modifications are proposed to further harmonize the regulation with current federal service information requirements, to clarify existing requirements, and to improve the effectiveness of the regulation.

Comparison with Federal Regulations

The United States Environmental Protection Agency (U.S. EPA) approved amendments to its service information regulation on May 30, 2003. (See 40 Code of Federal Regulations part 86, sections 86094.38 et seq.) The amended federal rule, with one significant exception, is very similar to the ARB's existing regulation, including requirements for service information to be made available over the Internet and for the availability of diagnostic tools and training information. The primary difference between the two regulations is that the existing ARB service information regulation provides that the aftermarket parts industry is entitled to information and tools; the federal regulation

ensures information access only to the service and repair industry. The broader scope of the California regulation was directed by the mandates of SB 1146.

The ARB and the U.S. EPA have worked towards harmonization to ensure that federal and state requirements do not conflict. With the staff's proposal, the regulations would continue to be similar with respect to most requirements. Some differences would, however, continue to exist. Most significantly, in accord with the directives of SB 1146 and other Health and Safety Code provisions, the scope of the California regulation would continue to apply to the aftermarket parts industry. Additionally, the regulation would be broadened under staff's proposal to include heavy-duty engine and transmission manufacturers. Federal requirements apply only to light- and medium-duty manufacturers (as defined under California regulations).

BENEFITS OF THE PROPOSAL

The ARB staff's proposal would help ensure that the heavy-duty vehicle service industry has access to adequate information, tools, and replacement parts necessary to diagnose and repair emission-related malfunctions. The proposed amendments will help to maximize the emission benefits to be realized by stringent 2007 and later model year emission standards for heavy-duty vehicles and the ARB's future OBD regulation for such vehicles. By 2010, the ARB projects that new heavy-duty diesel emission standards will reduce oxides of nitrogen and particulate matter statewide by 48.0 and 2.7 tons per day, respectively.

The proposal would also help to ensure that on-board computer remanufacturers have access to adequate information and tools to continue their business. The availability of lower cost replacement parts, including on-board computers, will increase the likelihood of prompt repairs when emission-related malfunctions do occur.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

The ARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the potential environmental and economic impacts of the proposal, and supporting technical documentation. The staff report is entitled: "Initial Statement of Reasons for Proposed Rulemaking, Public Hearing to Consider Amendments to Regulations for the Availability of California Motor Vehicle Service Information."

Copies of the ISOR and full text of the proposed regulatory language, in underline and strike-out format to allow for comparison with the existing regulations, may be accessed on the ARB's website listed below or may be obtained from the ARB's Public Information Office, Visitors and Environmental Services Center, 1001 I Street, First

Floor, Sacramento, California 95814, (916) 322-2990, at least 45 days prior to the scheduled hearing (January 22, 2003).

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on the ARB's web site listed below.

Inquiries concerning the substance of the proposed regulations may be directed to the designated agency contact persons: Dean Hermano, Air Resources Engineer, at (626) 459-4487, or Allen Lyons, Chief, Mobile Source Operations Division at (626) 450-6156.

Further, the agency representative and designated back-up contact person to whom non-substantive inquiries concerning the proposed administrative action may be directed are respectively Artavia Edwards, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-6070, and Alexa Malik, Regulations Coordinator, (916) 322-4011. The Board has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the agency contact persons.

If you are a person with a disability and desire to obtain this document in an alternative format, please contact the ARB's Clerk of the Board at (916) 322-5594 or sdorais@arb.ca.gov as soon as possible. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

This notice, the ISOR and all subsequent regulatory documents, including the Final Statement of Reasons (FSOR), when completed, are available on the ARB Internet site for this rulemaking at <http://www.arb.ca.gov/regact/cmvsip04/cmvsip04.htm>

COSTS TO PUBLIC AGENCIES AND TO BUSINESS AND PERSONS AFFECTED

The determinations of the Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulations are presented below.

The Executive Officer has determined pursuant to Government Code section 11346.5(a)(5) that the amendments will not create costs or mandates to any local agency or school district whether or not reimbursable by the state pursuant to Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code, or other nondiscretionary savings to local agencies. The Executive Officer has further determined pursuant to Government Code section 11346.5(a)(6) that the proposed regulatory amendments will not create any costs or savings to any state agency, or any cost to any local agency or school district that is required to be reimbursed under Part 7

(commencing with section 17500), of division 4, or other nondiscretionary cost or savings imposed on local agencies, or any cost or savings in federal funding to the state.

The Executive Officer has also made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The Executive Officer has further determined that there should be insignificant, potential direct cost impacts, as defined in Government Code section 11346.5(a)(9), on representative private persons or businesses acting in reasonable compliance with the proposed action. The proposed service information regulation will directly affect approximately 30 heavy-duty engine and transmission manufacturers. Although heavy-duty engine and transmission manufacturers would incur costs to comply with the regulation, some or all of these costs may be recoverable through the sale of service information and tools. The proposed amendments would likely have a small positive cost impact on independent service repair facilities and aftermarket part manufacturers that do business in California because of the greater availability of service information and tools. Although the proposed amendments may indirectly have some adverse cost impacts on heavy-duty vehicle franchised dealerships and service networks in California through the loss of some repair business to independent service facilities, the impact would be the result of increased competition, consistent with the intent of the Legislature in drafting SB 1146.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action will not result in the elimination of jobs or elimination of existing businesses within the State of California.

The Executive Officer has determined that the proposed action may possibly create some jobs, create new businesses, or promote the expansion of businesses currently doing business within California. An assessment of the economic impacts of the proposed regulatory action can be found in the staff report.

The Executive Officer has further determined, pursuant to Government Code sections 11346.3(c) and 11346.5(a)(11), that the regulatory requirements for motor vehicle manufacturers to file reports are necessary for the health, safety, or welfare of the people of the state.

The Executive Officer has also determined, pursuant to title 1, CCR, section 4, that the proposed regulatory action will affect small business. Small businesses in the aftermarket service and parts industries should be positively affected by the availability of service information and tools. And, as noted above, while some heavy-duty vehicle

dealerships and service network facilities may be adversely affected by the potential for increased competition, this result was the intent and purpose of SB 1146.

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the agency or that has been otherwise identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing at the hearing, and in writing or by e-mail before the hearing. To be considered by the Board, written submissions not physically submitted at the hearing must be received **no later than 12:00 noon, January 21, 2004**, and addressed to the following:

Postal Mail is to be sent to:

Clerk of the Board
Air Resources Board
1001 "I" Street, 23rd Floor
Sacramento, California 95814

Electronic mail is to be sent to: cmvsip04@listserv.arb.ca.gov and received at the ARB by no later than **12:00 noon, January 21, 2004**.

Facsimile submissions are to be transmitted to the Clerk of the Board at (916) 322-3928 and received at the ARB no later than **12:00 noon, January 21, 2004**.

The Board requests, but does not require, 30 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The ARB encourages members of the public to bring any suggestions for modification of the proposed regulatory action to the attention of staff in advance of the hearing.

STATUTORY AUTHORITY

This regulatory action is proposed under the authority granted to the ARB in California Health and Safety Code sections 39600, 39601, 43000.5, 43018, 43105.5, and 43700. This action is proposed to implement, interpret or make specific sections 39027.3, 43104, and 43105.5 Health and Safety Code.

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340) of the Government Code.

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public adequately has been placed on notice that the regulatory language as modified could result from the proposed regulatory action; in such event the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, for at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from the ARB's Public Information Office, Visitors and Environmental Services Center, 1001 I Street, First Floor, Sacramento, California 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD

/s/

Catherine Witherspoon
Executive Officer

Date: November 24, 2003